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The PRESIDENT: Please be seated. Professor Stojanović, you have the floor.

Mr. STOJANOVIĆ: Thank you, Madam President. In my address, I shall first provide an historical account of the armed conflict in Bosnia and Herzegovina, in order to show that it was no “tsunami”, but a conflict which had been simmering for several decades prior to the outbreak of armed hostilities.

HISTORICAL CONTEXT OF THE ARMED CONFLICT IN BOSNIA AND HERZEGOVINA

Part One

Historical synopsis of the armed conflict in Bosnia and Herzegovina

1. Madam President, Members of the International Court of Justice, I should like first to express my respect for this Court, a respect which I shall display and demonstrate throughout these proceedings. As the Agent of my country — Serbia and Montenegro — it falls to me to argue for the defence in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, brought by Bosnia and Herzegovina. Before I begin, I should like to emphasize that I am motivated and guided not only by my emotions, but also by my reason. It is in fact my reason that tells me that my country is terribly offended by the Application, which alleges its responsibility for the most serious crime of modern civilization.

I shall begin my address today, before the Court, with the following hypothesis, emphasizing that this hypothesis is based on my convictions and my reasoning: no person and no evidence can prove that Serbia and Montenegro had the intention of destroying the Muslim people of Bosnia and Herzegovina, either during the 1992-1995 war or at any time in the history of the relations between these two peoples in the nineteenth and twentieth centuries.

2. It is not at all my intention to fatigue you with a detailed account of the historical events of the nineteenth and twentieth centuries. Rather, I shall seek to rebut the allegations contained in Bosnia and Herzegovina’s Application, which go back in history to the first half of the nineteenth century, and the sole purpose of which is to prove that the Serbian people have harboured genocidal designs against the Muslims both in the past and today.

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I shall not now delve into history in order to find evidence, since it is a well-known fact that, once hostilities had broken out, all the parties involved looked for grounds for its continuation, as a way of endorsing and justifying the conflict. At the same time, they avoided mentioning events which testified to co-operation and friendship. Unfortunately, there can be no relationship, whether between individuals or between social groups, in which there are not lengthy or brief periods of conflict. However, it cannot be denied that the historical continuity of a certain type of relationship has some bearing on the current state of relations. On the other hand, it cannot be the cause of current events. History does not repeat itself, and changes in human relations are possible at all times.

I should like to emphasize that, in the research relating to the history of a conflict (while it is still ongoing), negative events are always accentuated. In this way, history is blatantly used as a form of war propaganda.

3. Lastly, I should like to say that I do not believe that history was the underlying cause of the hostilities in Yugoslavia and of the hostilities between Serbs and Muslims in the tragic war of 1992-1995. History could probably provide some explanations for barbaric conduct in conflicts, which usually have rational aims. However, it so happens that military conflicts are usually accompanied by pathological social behaviour: crimes of all kinds, which are punishable by modern legal process, and the planners and perpetrators of which are necessarily prosecuted and brought before national or international courts.

4. Hostilities broke out in Yugoslavia because of the adversaries' different perceptions of their interests. Those perceptions were false in their rational assessment of the circumstances, interests and instruments for the achievement of their aims, since today's international community rules out the use of instruments of force in order to realize particular interests. For this reason, Bosnia and Herzegovina's contention in its Application that this conflict derives from the long-standing notion of the creation of a Greater Serbia, is totally false. Similarly, the 1844 Garasanin Plan is described in the Application as a document confirming the motive for the commission of genocide by the Serbs in the inter-ethnic war of 1992-1995. According to Bosnia's Application, the current State of Serbia and Montenegro must take responsibility for all this.

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5. According to the Application, “[t]he Respondent’s concept of the ‘Greater Serbia’ is based on the ‘Nacertanije (Plan)’ published by the Serbian priest Garasanin in 1844” (Application, para. 24). First of all, it must be emphasized that Ilija Garasanin was never a Serbian priest, but was the Minister of Internal Affairs in the Principality of Serbia (later, he was to become the Minister for Foreign Affairs and Prime Minister). This error was corrected later in the Memorial of the Government of the Republic of Bosnia and Herzegovina (para. 2.3.1.2) and in the Reply (Chap. 4). Secondly, this plan was published not in 1844 but in 1906: which proves that it was known only to the elite of the Serbian Government and was considered a high-level State secret.

6. However, the Applicant seeks to demonstrate that the idea of a Greater Serbia has existed and been kept alive uninterruptedly from 1844 to the present day and that it was the ultimate goal of the Serbs during the war in Bosnia and Herzegovina. In the same paragraph, the Applicant states: “[m]ore recently, this plan to create a ‘Greater Serbia’ was forthrightly articulated in a ‘Memorandum’ published by the Serbian Academy of Sciences and Arts in Belgrade in 1984”. This error concerning the date (not 1984, but 1986) was corrected in the Memorial, but another mistake was made. I quote: “This memorandum, signed by approximately 200 prominent Belgrade intellectuals . . .”.

7. In all the documents supplied to the Court by Bosnia and Herzegovina, there is a substantial number of material errors (concerning the facts). The truth is that the Memorandum in question was not signed by anyone — not even by its authors. It was published as an article in the press, in unfinished form — in fact, a journalist found it and published it in a Belgrade magazine. Not only was this text never signed, but no section of our Academy of Sciences and Arts ever recognized it as a document of that institution.

8. What can immediately be said about that document is the following:

(A) it was immediately condemned by the State and by the Serbian Communist Party, one of whose senior officials was Slobodan Milosevic;

13 (B) the document makes no mention whatsoever of the creation of a Greater Serbia, but lays stress on the reorganization of Yugoslavia in accordance with the principles of communist central planning set out in the first Constitution of 1946, adding ideas for self-management from the 1963 Constitution;

(C) given these characteristics of the Memorandum, it had no influence on the development of political pluralism and democratic opposition from 1989 onwards. No party political programme in Serbia contains ideas expounded in the Memorandum;

(D) it is deeply offensive to the great majority of politically aware Serbian intellectuals and citizens to say that the Memorandum, drafted by a small group of members of the Serbian Academy of Sciences and Arts, inspired and motivated the democratic revival in Serbia after the fall of communism in Europe.

9. Contrary to the opinion expressed by the Government of Bosnia and Herzegovina and by some historians (see M. Vickers, *Between Serb and Albanian: A History of Kosovo*, Columbia University Press, 1998, pp. 222-223), we are of the opinion that the Memorandum does not represent some form of plan relied on by Milosevic. However, the Memorandum contributed to the growth of fear for the fate of the Serbian people. But it was not a call for ethnic cleansing, still less for genocide. The Memorandum was not a document explaining the causes of the Yugoslav crisis and it did not propose concrete solutions. It was not a plan but a mere literary lament (see S.P. Ramet, *Balkan Babel*, Westview Press, 1996, p. 200).

10. The Academy's Memorandum did not stir the national and political awareness of the Serbian people. However, Garasanin's plan (*Nacertanije*) of 1844 no doubt penetrated the national consciousness of the Serbian people. Its impact was felt in Serbia up to the First World War when the plan was implemented under the Constitution of the Kingdom of Yugoslavia. This explains the determination of the Serbian people to support the policy of their Government in the Balkan War and in the Great War. It should be noted that this awareness was widespread among the Serbs who remained in Bosnia and Herzegovina and Croatia. Thus, at the time of the Great War, a large number of volunteers in the Serbian army came from these countries (more than 100,000 Serbian volunteers on the Thessalonika front in 1916-1918 came from regions that were not part of the Serbian State).

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11. The plan, as devised by Garasanin in 1844, had no special or novel significance for the Balkans or for the Europe of that time. I will not waste your time, Madam President, Members of the Court, in demonstrating this argument with a description of the programmes for the liberation and integration of European peoples in the process of establishment of European nation States in

the nineteenth century. All the peoples of the Balkans and central Europe had their own national plans for the creation and establishment of nation States with the largest possible territorial expanse. Such plans were to be found in Germany, in Italy and in other countries as well. They were premised on the destruction of existing empires, and this sometimes led to wars, especially if the intended goals could not be achieved by diplomatic means. The Balkans were by no means the exception in this overall process in Europe.

12. Moreover, the Balkan peninsula was not so named until the first half of the nineteenth century. Up to that point in time, the region was known as South-East Europe (its name dating as far back as the Middle Ages) and subsequently, in the seventeenth century, as European Turkey. However, it was more precisely in the nineteenth century (and this continued until the Great War) that the stereotypical phrase “powder keg of Europe” was applied to the Balkans. That stereotype is still with us. It is not difficult to observe that, from 1800 to 1945 in western Europe, there were 16 wars and two prolonged conflicts (in Ireland and the Basque country), not counting the colonial wars in Africa, Asia and Latin America. In the Balkans, on the other hand, this period saw eight insurrections and wars as well as a prolonged conflict between the Serbs and the Albanians.

13. The figures clearly show that the inhabitants of the Balkans can be neither proud nor regretful that they are “the powder keg of Europe”. What has happened, however, is that in western Europe, for more than 60 years now, there have been no military conflicts (leaving aside the colonial wars waged by certain European countries, albeit outside Europe). This is due to the fact that, among the countries constantly at war in times past, one now finds a very high level of co-operation and even integration. In the Balkans, on the other hand, during the last decade of the twentieth century, we witnessed four wars between peoples who had lived in peace since 1945.

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14. The question which now has to be addressed is the following: why in the Balkans did conflict not cease for ever 60 years ago, as it did in western Europe? No one would deny the appalling nature of the conflicts in the Balkans. However, the fact that the equally dreadful past in Europe, which the people of Europe have been able to overcome and put aside, should teach those seeking peace in the Balkans that they should not attempt to dig up the past, for all that they will generally find is what suits current political requirements. What has to be done is to analyse the existing situation in the Balkans and ask why this problem does not exist elsewhere in Europe. It is

clear at once that in the Balkans there still exist very powerful sentiments of intransigence and religious intolerance, as well as ultra-nationalist projects supported by certain political elites. It is only by keeping in mind this image of the Balkans that it is possible to explain not only recent wars, but also the pathological bestiality and aggression which have marked those wars. It is precisely because of these forms of animosity, that the parties to the conflicts have not been able to find a peaceful solution to their opposing interests. Consequently, the solutions to their problems have had to be found and implemented by the great powers and the international community. Naturally, those solutions are based on current rules of international law. It is only by determining, in the light of international law, the responsibility of those who conceived and implemented political decisions and by working on the process of reconciliation that a peaceful and final solution to latent conflict in the Balkans can be achieved.

The international community, and in particular the great powers, contribute far more to the solution of the Balkan problem by supporting plans for reconciliation rather than by employing force. We in the Balkans absolutely have to call a halt to this vicious circle of vengeance and counter-vengeance for past crimes, and learn and build mutual respect and confidence. Continuing to refuse any form of dignity to one's opponents, continuing to misrepresent their history, culture and political and religious institutions, cannot be expected to achieve reconciliation. For this reason, I ask the Court to reject the defamatory account of the contemporary history of the Serb people; such defamation is apparent in all of those claims of Bosnia and Herzegovina in which it stresses a line of continuity between the Garasanin plan and the tragic events which occurred.

16 However, the Garasanin plan must be viewed in the context in which it was written, and it has no connection with the events of the late twentieth century. Misrepresenting the Garasanin plan contributes nothing to reconciliation of the Balkan peoples. Moreover, the Serb people and State never contemplated destroying the Muslim population in Bosnia and Herzegovina or elsewhere.

15. In 1985, David Mackenzie, a well-known American expert on Serbian and Russian history, published a book entitled *Ilija Garasanin: Balkan Bismark* (East European Monographs, Boulder, Distributed by Columbia University Press, New York). Mackenzie's comparison is perhaps not appropriate, but it can encourage us to think. This is certainly the best book published on Garasanin; the reason for this is simple: the American author had the opportunity to conduct

research in all of the relevant European archives and thus had access to all the necessary documents, whereas this possibility was not open to Serb historians. Mackenzie has published a large number of books on Russian and Serb history, of which one of the best known is his doctoral thesis, *Serbian-Russian Relations 1875-1878* (Columbia University), published under the title *The Serbs and Russian Pan-Slavism 1875-1878* (Cornell University Press, 1967).

16. The Garasanin plan (*Nacertanije*) was a proposal for Serbia's foreign policy, which saw the light of day in the nineteenth century, in which the final aim of that policy was formulated: liberation and union of all of the southern Slavs. Achievement of this plan required that Serbia as a State achieve greater political power, for this (political power) is the decisive factor in the political arena. The introduction to the plan includes the following: "Serbia must realise that she is still small, that she cannot remain so, and that she can achieve her future only in alliance with other surrounding peoples." (Mackenzie, 1985, p. 42.)

17. Serbia commenced its struggle for national liberation from Ottoman rule in 1804; in 1813 the country was reoccupied by the Ottomans. In 1815 the Serbs rose up again. From then on, Serbia had the status of vassal principality within the Ottoman Empire, a status which it retained until 1878. In 1878, at the Congress of Berlin, Serbia was recognized as an independent State.

17 18. In 1844, the Principality of Serbis already had elements of an independent State, for the Ottoman Empire was at that time no longer able to control its vassal regions. I should mention here that, already in 1807, Serbia had established its own political system: a Constitution, an educational system, a university. Later, in 1844, it also introduced a Civil Code. Thus, Serbia had already begun at this time to detach itself, from the political, legal and social standpoint, from the political and State system of the Ottoman Empire.

19. It was in this historical and social context that Serb political thinkers planned the country's future. It was indeed at that time that the pan-Slav movement (equivalent of the pan-Germanic movement) was born. That movement inspired the southern Slavs and helped them articulate their ideas on the union of all of the southern Slavs within a common State. Thus, the Serbs and Croats, intellectually and politically supported by the Czechs and Poles (who also wished to liberate themselves from their occupying empires) reached the level of political conscience

necessary in order to initiate the struggle for liberation and integration. That integration included the Serbs, the Croats, the Slovenes and the Bulgars.

20. Ilja Garasanin conceived his plan on the basis of political realities: he understood that the Serbs first needed to free themselves from Ottoman rule. That was achievable, for the Ottoman Empire was by then in a very enfeebled state. However, in 1848, when revolution broke out in Hungary, the Serbs and the Croats, in fighting against the Hungarians, chose to struggle *together* for freedom and union. The Hungarian revolution of 1848 caused Garasanin to enlarge the scope of his national interests: he also included an alliance with the leaders of the Croat national movement, reinforcing “the idea of Yugoslavism”. That idea had, solely for realistic political reasons, been neglected in his 1844 plan. I stress that Garasanin did not confine himself to theoretical writings on the future of Serbia, but in fact attempted to realize his political aims over a vast area by establishing clandestine agencies and schools in Bosnia and Herzegovina, Croatia and Bulgaria. As a diplomat, he contributed to the birth of the military and political alliance of the Balkan States (Greece and Montenegro) which was preparing for war with the Ottoman Empire. That alliance was achieved in 1868. That same year Garasanin signed an agreement with the revolutionary committees in Bulgaria and Romania who were planning insurrection in Bulgaria, and union between Bulgaria and Serbia once Bulgaria had been liberated from Ottoman rule.

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21. During the period when the Balkan alliance was being formed, Garasanin wrote the following to the Croat Bishop Strossmayer in a letter of 1867:

“The Serbian and Croatian nationalities are one — the Yugoslav (Slavic) nationality: religion is not to interfere in the least bit in national affairs: the state is the only basis of nationality; religion divides us and separates us into three parts (i.e. Orthodox Christianity; Roman Catholicism, Islam), but it can never be the principle of our unification into one state; it is our nationality, which is the same, that counts; in the state all churches are equal.” (Dusan Batakovic, *The Balkan Piedmont: Serbia and Yugoslav question*, Belgrade, Institute for Balkan Studies, 1992, 3.)

22. Garasanin’s plan was essentially and above all a form of pan-Slav programme. Thus it was not an exclusively Serb programme. The greater part of the text was drafted by the Czech advisor, Frantisek Zach, who had been sent to Belgrade by the Polish Prince Czartoryski, then in exile in Paris (following the disastrous Polish uprising of 1830). Garasanin made certain important changes to the text: he watered down anti-Russian sentiment and revised the programme for the

union of the southern Slavs by conceiving of Serbia as the Piedmont of the southern Slavs, focus for a union of all the southern Slav peoples. He insisted, however, that each people should retain its identity and independence (see Audrey Helfent Budding, Expert Report, ICTY, 3).

23. Garasanin clearly indicated in his plan that it should include union with the Bosnian Muslims within a single State. However, although his primary aim was liberation of the Serbs from Ottoman rule, the plan expressed no animosity towards the Bosnian Muslims, who, as members of the Turkish army, actively participated in putting down the Serb uprisings of 1804, 1813 and 1875. In Bosnia and Herzegovina itself, the Serbs organized several uprisings against Ottoman rule. The Bosnian Muslims sided with the Turks. That is a historical fact which can in no way assist us in understanding the events of 1992 to 1995 on the territory of Bosnia and Herzegovina. I stress that the Serb-Muslim conflicts of the nineteenth century culminated in the great Serb uprising of 1875-1878. That insurrection sparked off the Eastern crisis, marked by the Serb and Russian wars (1876-1878), which were ended by the peace terms signed at the Congress of Berlin in 1878. That Congress ratified the occupation of Bosnia and Herzegovina by the Austro-Hungarian Empire, proclaimed the independence of Serbia and Montenegro and created the Principality of Bulgaria as a sort of vassal State within the Ottoman Empire.

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24. In its Application (para. 9), the Applicant states: “In Bosnia, the human rights of all were respected centuries before the Universal Declaration of Human Rights came into being.” My aim is not now to dispute this thesis, since it would be pointless to try to show that human rights were respected within the Ottoman Empire. I shall, however, cite a brief analysis from the book by Robert J. Donia and John V.A. Fine Jr, *Bosnia and Herzegovina, a Tradition Betrayed* (Columbia University Press, New York, 1994, 63): “Most important is the large number of local administrations than it was the case in many other Ottoman provinces. Moreover, many of these locals succeeded in building up large estates. Thus many Christians found themselves serfs on Muslim estates.”

25. With the decline of central authority within the Ottoman Empire, the local Muslim rulers exploited the Christian population in an increasingly cruel manner.

26. The quotation from Bosnia’s Application which I have just cited cannot be accepted, for the historical facts show that, once Bosnia and Herzegovina had been occupied by the

Austro-Hungarian monarchy in 1878, the process of reconciliation between Serbs and Muslims had a very clear aim: resistance to the Austro-Hungarian occupation. Thousands of Muslims left Bosnia and Herzegovina following that occupation. The occupation also downgraded the status of Serbs, since it made their political struggle for assimilation with Serbia far more difficult: they were now confronted by a State far more powerful and better organized than the dying Ottoman Empire. The Muslim and Serb nationalist political organizations thus began to collaborate in order to prepare uprisings. That collaboration lasted until 1912, when the victory of the Serbs and their allies (Bulgaria, Greece and Montenegro) in the Balkan War gave powerful impetus to the revolt against the Austro-Hungarian monarchy. However, the Muslims did not support that revolt, for they had no interest in being absorbed into Serbia. The same goes for the Croats, who did not support the Serb uprising of 1875-1878, fearing that Bosnia and Herzegovina might unite with Serbia and Montenegro if the uprising succeeded.

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27. After the Congress of Berlin an exclusively national policy prevailed in Serbia, because Serbia chose alliance with the Austro-Hungarian monarchy. The ideas in the Garasanin plan were abandoned by the Serbian Government, so that foreign policy and trade were directed mainly towards Austro-Hungary. On the other hand, as from 1885 Serbia began to devote attention to its own economic and cultural development, with excellent results. A modern-type multi-party system developed in Serbia under the new Constitution of 1888, which introduced democratic suffrage to Serbia based on the 1830 Belgian model. However, a new young king, Aleksandar Obrenovic, acceded to the throne of Serbia; he abolished the democratic constitution and introduced absolute power. Thus progress in Serbia was checked. From that time until 1903 Serbia had practically no foreign policy goals and Garasanin's ideas were forgotten. In 1903 a group of Serbian officers put an end to King Aleksandar Obrenovic's reign by assassinating him.

28. The 1903 coup marked a turning-point in Serbia's foreign policy: this was when Serbia broke free from its submission to Austro-Hungary and set a course for political, economic and cultural prosperity. The 1888 Constitution was restored and the Government became answerable to Parliament. At the same time new trends in foreign policy separated the country from Austro-Hungary and brought it politically, economically and culturally closer to the Triple Entente powers, namely France, England and Russia. So it was no mere chance that the Garasanin plan

was published in 1906: Serbia no longer wanted to conceal its policy of uniting all the southern Slavs, a policy that was injurious to Austro-Hungary. The same year Austro-Hungary started the “customs war” against Serbia, because the latter had shown that it intended to free itself from economic dependence. France and England helped Serbia at the time by allowing it to export its products to European markets via Thessaloniki. This obviously gave Serbia’s economic development an enormous boost.

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29. Publication of the plan (*Nacertanije*) coincided in time with the political organization of forces in Europe into two blocs, which in 1914 was to cause the Great War. Serbia immediately aligned itself with the Triple Entente forces, because the goals of the Garasanin plan ran counter to the interests of Austro-Hungary. Of course the Austro-Hungarian monarchy was against the union of the southern Slavs.

30. After defeating Turkey in 1912 (with its allies, Bulgaria, Greece and Montenegro), Serbia doubled its territory. It became renowned in the Yugoslav region.

31. Rejoicing in this renown, Serbia went to war in 1914. Right at the beginning of the war the Parliament of the Kingdom of Serbia proclaimed Serbia’s political goals: essentially the union of the southern Slavs. The First World War ended in a great victory for America, England and France. Serbia’s major contribution to that victory, in particular in action on the Thessaloniki front where its army fought alongside French and British armies, should not be forgotten. The Kingdom of Serbs, Croats and Slovenes was proclaimed on 1 December 1918. This proclamation was in accordance with the right of self-determination for peoples introduced by President Wilson in 1917, when the United States entered the war. The Austro-Hungarian monarchy was completely broken up, and new States were created: Czechoslovakia, Hungary and Poland. Russia, which was a member of the Entente, ceased to exist during the Bolshevik revolution and the Soviet Union was born. Thus the Garasanin plan of 1844 was realized in 1918. Unlike Bismarck, Garasanin was unable to see his plan for union implemented, because he had died 44 years earlier.

32. Realization of the Garasanin plan was ratified by international law at the Versailles Peace Conference in 1919. It would therefore be unthinkable to try Serbia now for an alleged genocide the groundwork for which was laid in the Garasanin plan, because that plan was implemented thanks to international ratification proclaimed at the Versailles Peace Conference. This ratification

was in accordance with the principle of self-determination of peoples after the break-up of the European empires.

22 33. It should now be stressed that the protection of Muslims as a “religious minority” was proclaimed at that conference in Versailles. Article 10 of that Agreement [Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State], signed at Saint-Germain-en-Laye on 10 September 1919 provides that: “The Serb-Croat-Slovene State agrees to grant to the Musulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with Musulman usage.”

34. The creation of Yugoslavia in 1918 marked the full implementation of the national programme devised by Garasanin. I repeat that this plan contains no element that might provoke persecution, ethnic cleansing or extermination of a people living in the territories affected by the plan. The idea of a Yugoslav State was approved by the Serbian intellectual and political elite because the ethnic structure of the region was such that creating ethnically pure States would be impossible. Between the two world wars the Serbian political elite was convinced that the creation of individual ethnic States would involve casualties, and therefore never considered the idea.

35. Nationalistic trends in the creation of the plan for territorial enlargement of Serbia were present in the nineteenth century, but these ideas were in accordance with ideas current in the whole of Europe. The Serb nationalist programme in the nineteenth century matched the process of national State creation in the whole of Europe. As such it was quite legitimate at the time, from the point of view both of the ideas that it contained and of its tools, including the approval of wars, which at that time was a legitimate way of achieving national goals and liberating people who were living in part under Turkish or Austro-Hungarian occupation.

36. In any case I have just said, but now repeat: that the national programme set out in the Garasanin plan contained no idea that could be interpreted as a call or incitement to persecution or ethnic cleansing, still less the destruction of a people. Quite the contrary; this plan envisaged the union of various ethnic and religious groups in a multi-ethnic State.

37. The proof of this is the way in which the Serbian army controlled the territories of the future Yugoslav State in the final operations of the First World War. The Serbian army never used violence in the territories that it controlled. Furthermore, that army took some

60,000 Austro-Hungarian soldiers prisoner in 1914 and 1915, all of whom were treated according to the rules of international law. These soldiers were freed by the Austro-German troops who occupied Serbia late in 1915.

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38. Moreover, major population movements took place everywhere in the Balkans, outside the new Yugoslav State, after the Balkan war of 1912 and also after the Great War, precisely to avoid potential future conflicts.

39. In her testimony before the ICTY Audrey Budding said:

“certainly I would not want to make any claim for an identity of motives between Serbian politicians of the middle or late nineteenth century and Serbian politicians of the late twentieth century. I think that the historical situations are very different and on the whole I would be more comfortable discussing each situation by itself.” (ICTY, *Prosecutor v. Slobodan Milosevic*, 24 July 2003, pp. 24868 and 24869.)

40. The stance taken by Audrey Budding refers to the analysis of war events in Bosnia and Herzegovina in 1992-1995. At the same time this means that we suggest that the International Court of Justice should reject as without foundation the statement by Bosnia and Herzegovina (Reply, Chap. 4, Sec. 1, para. 4) that “such a political programme [the nineteenth century national programme] can easily be used as part of a political propaganda campaign supporting the idea of an ethnically pure State”. I think that up to now I have submitted enough arguments to enable the International Court of Justice to reject the accusation that the nineteenth century idea of a “Greater Serbia” was used to create propaganda and by its nature amounted to genocide, namely that it was an incitement to criminal acts of genocide.

41. A discussion of historical conspiracies to commit genocide is of no assistance whatever in seeking to identify the causes of the conflict at the end of the twentieth century. Consequently it contributes nothing to national reconciliation of the parties to the conflict, which is the goal after any inter-ethnic conflict, including those before the courts.

The period between the two world wars

42. The end of the First World War saw the success of Ilija Garasanin’s national programme, its realization in practical terms. Afterwards the main aim of the Kingdom of Yugoslavia’s foreign policy was to protect the country against external threats by maintaining the alliance with the forces

that had created the Versailles system after the First World War. The Versailles system was in itself under threat from “revisionist” countries (mainly those defeated in the war).

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43. The Soviet Union was among the countries that conducted a revisionist policy relative to the system set up by the Peace of Versailles. Soviet ideology regarded the Great War as imperialist, and consequently the Peace of Versailles was also regarded as an imperialist peace. In accordance with this ideological position, the Soviet Union’s foreign policy opposed the creation of the Yugoslav State, which was seen as imperialist because of purported Serb hegemony over the other Yugoslav peoples. Whether there was Serb hegemony within the Yugoslav Kingdom is highly debatable. As I do not regard this issue as relevant to these proceedings, I will not return to it again.

44. What I do consider relevant, in order to show that there was no continuity between Ilija Garasanin’s plan of 1844 and the Yugoslav Kingdom’s foreign policy in 1919-1941 on the one hand, and the policy of Slobodan Milosevic’s régime (1990-2000) on the other, is the policy of the Yugoslav communist party, which was implementing directives from the Communist International (Comintern) managed by the Soviet communist party. I find this important because Slobodan Milosevic was a communist, who came to power in Serbia in 1990 as leader of the communist party., in proving

45. Even at the first Comintern congress in 1919, the creation of the Yugoslav State was regarded as the result of an imperialist war, not as the consequence of a secular trend by the Yugoslav peoples. In that year of 1919 the Comintern condemned the creation of the Yugoslav State, without having any evidence that the hegemony of the “Greater Serbia” had been established in Yugoslavia.

46. The resolution on the Yugoslav national question was passed at the fifth Comintern congress in July 1924. This resolution gave the Yugoslav communist party the task of working for the destruction of Yugoslavia as a State. This resolution stated:

“1. Yugoslavia is a multinational country. The Serb bourgeoisie that exercises hegemony over it represents only 39% of the Yugoslav population. The other peoples that represent the great majority are more or less subject to a regime of national oppression and a policy of denationalisation is operated against them.

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3. The duty of the Yugoslav communist party is to carry on a constant struggle against national oppression and in support of the self-determination of peoples, striving constantly to protect itself from the influence of the bourgeoisie and to put those peoples in touch with the working-class struggle against the bourgeoisie and the capitalists.

.....
7. The general principle of the right of self-determination must be based on the separation of Croatia, Slovenia and Macedonia from Yugoslavia and on the creation of independent States.” (Historical Archives of the Yugoslav Communist Party, II, pp. 420-421.) [Translation by the Registry]

47. The Comintern even set up a committee on the Yugoslav national question. This was discussed in March 1925 during a Comintern session, attended by Stalin in person. He insisted on the inclusion in the Yugoslav communist party’s national programme of a paragraph on nations’ right to self-determination and eventual independence (*op. cit.*, p. 333).

48. After numerous discussions on the national question within the Comintern and in Yugoslav communist party cells, the national policy was finally adopted at the fourth Yugoslav communist party congress, held in Dresden in October 1928 (Palmiro Togliatti, the leader of the Italian communist party, was present at this session). It was there that the Yugoslav communist party’s programme for the struggle against the Serb bourgeoisie, its hegemony and its military monarchy was defined (*op. cit.*, p. 162). In order to achieve this end, the Yugoslav State had to be destroyed and separate national states created: Croatia, Montenegro, Macedonia and Slovenia. The Hungarian and Albanian minorities were also to be granted the right to self-determination, it being proposed that they rejoin their mother States, Hungary and Albania.

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49. The basis for an understanding of this Comintern policy can be found in the thesis that Yugoslavia was a product of the imperialist war, created as part of the Peace of Versailles, which was itself imperialist in nature. The Comintern did not feel threatened by the Yugoslav Kingdom’s anticommunist régime, because the situation in other neighbouring countries was no different. The Comintern did not relish the fact that Yugoslavia had been a member of the Entente alliance, which had organized military interventions against the Soviet Union just after the Bolshevik revolution. The Soviet Union feared a fresh intervention by these countries against the Bolshevik régime. Thus the Comintern executive committee stated the following at its tenth meeting in 1929: “There is going to be a war against the Soviet Union, under pressure from English and French imperialism.

To this end, the English and French imperialists are working to create an anti-Soviet bloc in the Balkans.” (Pesic Desanka, *Les Communistes yougoslaves et la question nationale*, Rad, Belgrade, 1983, p. 253.) [Translated by the Registry]

50. The change in Comintern policy at the seventh congress in 1935 was the main evidence confirming that the Comintern positions cited above resulted from the Soviet Union’s obsessive fear of foreign intervention. That year the Soviet Union and France signed a mutual aid agreement in the face of the obvious danger represented by Hitler’s Germany. The danger from Hitlerite fascism became obvious in 1935, so all forces had to be united against it. This was how the “imperialist creation of Versailles” that was Yugoslavia became a friendly country. The Comintern therefore decided at that congress that the Yugoslav communist party must protect Yugoslavia. The latter accepted these directives, and decided at its fifth congress in 1940 that Yugoslavia must be saved. The Montenegrin and Macedonian nations were proclaimed at this congress, and the structure of the future socialist Yugoslav federation was announced.

51. The Serbian communists unflinchingly carried out the directives from the Comintern and the Yugoslav communist party, with the result that documents and books written by Serbian communists are full of condemnations of Serbian bourgeois hegemony. All the Serbian national programmes from the nineteenth century onwards were condemned by the Yugoslav and Serbian communist parties and regarded as hostile, imperialist and bourgeois.

52. The Yugoslav communist party, like the Serbian communist party, came to power at the end of the Second World War, following the victory of the partisans, aided by the Red Army, in the civil war waged in parallel with the war against fascism. Yugoslavia was transformed into a federal republic under communist domination. The 1945 Yugoslav Constitution was simply a replica of the Soviet Constitution.

53. Regrettably, the crimes committed during the civil and inter-ethnic war were punished by the victors on an “eye-for-an-eye” basis. In practice this amounted to large-scale executions of prisoners from the defeated forces and of civilians who supported them politically. Inter-ethnic conflicts were repressed by the silence imposed under these conditions of “revolutionary terror” (here I am using communist jargon). Instead of national reconciliation on the basis of open

discussions among fellow citizens, hatred was repressed, only waiting for the right time to burst forth.

54. The Serbian communist party severely punished any attempt at political expression or discussion of certain problems relating to multi-ethnic conflicts during the civil war. At that time and until the 1980s, historians and critics did not dare to express opinions different from those set out in the communist party programme.

55. Since a federal State cannot function without a democratic decision making process, that process became the prerogative of party committees completely dominated by Tito. This system could survive during Tito's lifetime, but after his death in 1980 the dismemberment of the country began.

56. Slobodan Milosevic came on the scene less than ten years after Tito's death. Since Tito, who chose the high officials himself, no longer existed, Milosevic had to struggle in order to rise to power.

57. He used populist methods to achieve his ends. The long-standing political crisis in Kosovo, and the constant Serb migrations from Kosovo into central Serbia were the initial stimuli for Milosevic's populism. He wanted to safeguard a Yugoslavia in which he would become the new Tito. Since his ideas were not accepted by other political elites, he turned to the mobilization of Serb nationalism. This was not difficult, given the economic crisis in Yugoslavia in the 1980s and the nationalistic climate in Croatia and Bosnia and Herzegovina.

58. It is clear from this account of the history of Serbia and Yugoslavia that Milosevic could not have been the heir to the Garasanin plan, which dealt with the liberation of peoples and the union of all the southern Slavs.

Madam President, I have completed the first part of the historical summary of the conflicts in Bosnia and Herzegovina. May we take a break, if possible, after which I will continue with a description of the political conflict prior to the outbreak of the war in Bosnia.

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The PRESIDENT: Please be seated. Mr. Stojanović.

Mr. STOJANOVIĆ: Thank you, Madam. I shall continue my statement with an analysis of the political conflict before war broke out in Yugoslavia.

Second part

The political conflict before war broke out in Yugoslavia

59. The political conflicts which preceded the military conflicts shaped different political perceptions in the minds of the opposing parties. The question which arises is: what were the contexts in which those perceptions developed and how can we define them?

60. Given my view that the source of the conflicts in Yugoslavia is not to be found in historical developments or in ethnic and religious hatred and intolerance, but instead that the latter followed from the atrocities committed in the 1992-1995 war, I shall carefully analyse, Madam President, Members of the Court, events from an era in history which helped lay the psychological groundwork for the war. It is a known fact that, failing psychological preparation, military preparation for war is virtually impossible, particularly in modern times when inter-State military conflicts see involvement not only of professional armies (as was the case during the Middle Ages) but entire peoples.

61. This era is the period of the Second World War in Yugoslavia, in other words the period 1941-1945. This period is a matter of history but the protagonists in these events, even though the events themselves have become history, are still alive, these events are more than history — this is memory, real-life experience. The Hitlerite occupation of Yugoslavia was of course not carried out in accordance with international law. In effect, the occupation restructured Yugoslavia: a new State was created, the Independent State of Croatia, which encompassed not only Croatia itself but also Bosnia and Herzegovina. The State thus created was not merely illegal, it was also, by its very nature, plans and acts, a monstrosity.

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62. Slavko Kvaternik, a senior official of the fascist State of Croatia during the Second World War, explained on a radio programme on 10 April 1941, the very day on which the Independent State of Croatia was proclaimed, that “a pure Croatia would be built by forcing one third of the Serbs to leave Croatia, one third to convert to Catholicism and one third to be exterminated . . .” On the subject of this statement, the Encyclopaedia of European Nations has the following to say: “The enormity of such criminal behaviour shocked even the conscience of German commanders, but Pavelic had Hitler’s personal support for such actions which resulted in the loss of the lives of hundreds of thousands of Serbs in Croatia and Bosnia and Herzegovina.”

(*Worldmark Encyclopedia of the Nations*, Europe, 1995, p. 91, Entry: Croatia, *Encyclopaedia Britannica* 1991, Macropedia, Vol. 29, p. 1111.) Others have commented on the events in Croatia during the Second World War as follows:

“A Croatian Crusade of revenge and destruction directed against the Orthodox Serbs erupted, the crusade that belongs among the most brutal mass murders undertaken in the entire history of the world . . . When the leaders of the Ustashi movement claim that they have slit the throats of a million Serbs (including children, women and old people), that is, in my opinion, a boastful exaggeration. On the basis of the reports that were submitted to me, I estimate the number of defenceless murder victims to be three quarters of a million.” (Dr. Herman Neubacher, *Sonderaufrsng sudost 1940-45, Bericht eines fliegenden Diplomaten*, Gottingen, 1956, 18, 31.)

Thus, “only 750,000 Serbs” were murdered in the Independent State of Croatia, including Bosnia and Herzegovina! It may indeed be concluded that the monstrous scheme to eliminate one third of the Serbs in the Independent State of Croatia was carried out.

63. Unfortunately, after the Second World War, those most responsible for these heinous crimes were not tried and punished, while individuals bearing lesser responsibility were executed (except for those who successfully fled to countries offering asylum to Nazi criminals). In this connection, we do not at this time have consistent official figures from reliable sources as to the exact number of victims of the genocide committed by the Independent State of Croatia régime (the Ustashis, I believe you are familiar with the term). The widely varying and conflicting figures are used by nationalist groups and organizations and were advanced and discussed at their initial conferences in former Yugoslavia.

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64. Aside from the number of victims, the effects of the atrocious Ustashi crimes were also felt in Serbia. During the occupation, Serbia accepted several hundred thousand refugees. I shall recall here the existence of the infamous Jasenovac concentration camp, built on the banks of the river Sava and without doubt the most horrendous concentration camp in the Independent State of Croatia. During four years of war, the waters of the Sava ran red with blood, and corpses from the Independent State of Croatia washed up on the banks and islands of the Sava, along its course all the way down to its confluence with the Danube in Belgrade.

65. These unprecedented crimes have naturally remained etched in the memory of the Serb people in Bosnia and Herzegovina and in Croatia. However, it must not be forgotten that a period of peace began after the Second World War, lasting more than 45 years. The general feeling is that

reconciliation was conceived during that peace. This reconciliation cannot be explained by the “revolutionary terror” of the communist régime. I would stress here that it was also motivated by the fact that many Croats and particularly Muslims actively participated in the guerrilla war mounted by the communist party against the fascist forces. The friendships forged during the war were supported by the internationalist policy of the communist régime. Thus, neighbouring peoples established good relations. This was to be seen particularly among young people and explains a great number of inter-ethnic marriages in Bosnia and Herzegovina (30 per cent). Moreover, religious tolerance was supported by the general policy of the atheistic communist régime. Quite simply, the children of communist party members were not baptized in places of worship and, accordingly, grew up without any feeling of attachment to a religious group.

31 66. However, once the economic crisis struck (in 1980, the year of Tito’s death), the conflict between the federal units in Yugoslavia began. A few months after Tito’s death, in 1981, Yugoslavia suffered a debt crisis: Yugoslavia’s debt to foreign creditors amounted to \$19.3 billion at that time (Susan L. Woodward, *Balkan Tragedy*, The Brookings Institution, Washington D.C., 1995, p. 28). The economic impoverishment of the country brought to the fore the material interests of individuals, local communities and federal units (nations). Conflicts between individuals in respect of their material status easily mutate, in mixed ethnic-religious surroundings, into conflicts which are political and religious in nature, even though political and religious affiliation does not influence the material status of the individuals. As citizens grow impoverished, and at the same time unemployment rises and workers (above all, the unskilled) are laid off, certain criteria for hiring and dismissing people develop, criteria which are no longer solely economic but are tied to kinship, religion and ethnicity. Thus begins the split between those in the “in group” and those in the “out group” in the sociological sense. Differences in the development of the federal units linked the position of the individual to the position of the Republic, which was linked to the ethnic-national factor. Given that the political and constitutional systems were designed to establish equilibrium among the federal units, in the face of a single decision-making authority, and that Tito alone possessed that authority (which is natural in the communist system), political authority died with Tito. Without Marshal Tito’s authority, the Yugoslav communist system could no longer function.

Yugoslavia's constitutional and political system

67. The constitutional and political system established between 1967 and 1971 through a number of amendments to the Yugoslav Constitution was in fact the product of political pressure exerted by centrifugal forces insisting on decentralization of the State. However, the amendments did not effect decentralization of the central decision-making process to the benefit of local self-determination, through the federal units. The Federation alone was decentralized, while the federal units remained centralized, along the lines of the model dating back to 1963. Moreover, the way in which decentralization was carried out shows that it resulted in the creation of a system which was to lead to the disintegration of the State and not to the decentralization of authority in the State.

68. The amendments to the 1963 Constitution, which were adopted in the period between 1967 and 1971, transformed Yugoslavia into a pure confederation, lacking any functional instrument promoting integration. The following points demonstrate this:

(a) The hierarchical principle was abolished, with the result that the federal authority could not directly implement its laws. Under constitutional law theory, a State incapable of implementing its laws in its territory is not a State. The authorities in the Republics still co-existed with their communist parties, those parties not being confederated at republic level.

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In effect, the communist party was federalized only at the level of Yugoslavia itself. If a locality did not wish to implement a law of the Republic, it was necessary for the communist party committee responsible for that locality to put pressure on it and even for the local Chairman to be replaced. In any event, the law had to be imposed.

(b) Amendment XXXV introduced the requirement of unanimity in the decision-making process at the federal level. This applied to all important economic and political questions. The unanimity requirement (veto) undoubtedly blocked the decision-making process, because many decisions could not be taken in a timely manner. Failing to take a decision is also a decision, which could be imposed by any of the participants in the decision-making process. All this helped to create an atmosphere in which self-interest replaced the general interest. It should be mentioned here that there was no such requirement of unanimity in past examples of confederations.

(c) In such a system the federal units became sovereign in their international economic relations, with the result that each maintained a foreign-trade balance of payments. It is impossible to maintain both autonomy in international economic relations and a common internal market at the same time. The differences in the development of the Republics in Yugoslavia led to strong competition among them and, as there was no customs régime, the Republics covertly closed their markets to goods from the other Republics. Internal interdependence among the federal units could call for one of them to produce exclusively for the internal market (for example, that was the case for food). If it agreed to do so, it would be without foreign currency and would therefore be unable to meet its international financial obligations. If it nevertheless exported its products, these would no longer be found on the internal market. That is indeed what happened in Yugoslavia, where one unit exported certain products and another had to import them at the same time. This reinforced the process creating autarkic units within Yugoslavia. There was another important factor in this process: international contracts could not be signed without full consent from all federal units. However, contracts thus signed were implemented by the federal units, not by the federal authority which had formally signed them. Consequently, the ties between the federal units were weakened, with the result that they ran up unchecked and uncheckable foreign debt. In short, nobody in the Yugoslavia of the 1980s knew who owed how much to whom.

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69. After the 1971 amendments to the Constitution, Yugoslavia started down the path leading to disintegration of the State. That happened in all areas of social life. The market broke down, as did the energy, transport and communications systems. Similarly, political life, educational life and cultural life collapsed. Lastly, the communist party, which had by default (as I have already said) been the main force for cohesion, disintegrated. I would remind you that one of the communist party's functions during Tito's lifetime had been to resolve deadlock by taking decisions which the State government could not take. When the communist party disintegrated, the Yugoslav National Army remained the only truly Yugoslav institution. Thus, Yugoslavia, as a State, faced enormous peril, which included very hazardous means of resolving political conflicts. The constitutional reforms of 1971 may be regarded as the beginning of the political crisis in Yugoslavia.

Economic factors in the political conflicts

70. Political authority in communist systems plays a very important role in an individual's life and his or her social position. That is one consequence of the fact that the State holds the vast share of social property and directly decides how that property is to be distributed. Thus, eruption of an economic crisis necessarily triggers political crisis in which opposition arises to those alleged to be responsible for the economic crisis, poverty and unemployment. Very often, politicians stir up public opinion against an external enemy because they (politicians) can thereby deny their own responsibility for economic collapse.

34 71. In Yugoslavia, blaming someone else meant accusing another republic in the Federation, claiming that it was harming "our development". Given that the federal units in Yugoslavia were created along ethnic-national lines, this meant that, in fact, the accusations and attacks were made against the nations in question. Since the nations were intermingled in all the republics (except Slovenia), conflicts arose within the federal units as well. Given that Bosnia and Herzegovina was (and still is today) a three-nation republic, it became the focus for conflict in the region. Naturally, the Serbs and Croats sought support from their "brothers and fellows" in Serbia and Croatia.

72. One need only read the press or view the televised broadcasts of the time in Serbia, Bosnia and Herzegovina and Croatia to grasp that this was indeed the overture to war propaganda. The media contain analyses of "economic exploitation" of one nation by another. There is often talk of political aggression encouraged by nationalism. Moreover, a new mythology is born, a mythology steeped in nationalist stereotypes.

73. The different levels of economic development in the republics were not the result of an intentional process. The economically underdeveloped republics however believed that these differences were the product of the selfishness of the developed republics, which should give them economic aid. I would point out that Yugoslavia's existence depended for years on economic support from abroad. These differences propelled the developed Yugoslav republics towards secession. But secessionist tendencies had other consequences: particularly, opposition to secession arose in the ethnic-national communities which did not want to be cut off from their mother republics. That was the case of the Serbs in Croatia, as well as the Serbs and Croats in Bosnia and Herzegovina.

74. The economic situation deteriorated without interruption in the 1980s. According to Susan Woodward:

“By 1985-1986 the preconditions of a revolutionary situation were apparent. One million people were officially registered as unemployed. The increasing rates of unemployment were above 20 per cent in all republics except Slovenia and Croatia. Inflation was at 50 per cent a year and climbing . . . Allocation decisions increasingly became stark questions of survival . . . Economic polarization led to social polarization.” (S. L. Woodward, *op. cit.*, p. 73.)

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75. The economic situation is undoubtedly worse today in all the old republics of the former Yugoslavia (except Slovenia) than it was in the 1980s. For example, in Serbia alone there are now one million unemployed. However, political tension has clearly lessened and we can therefore expect the start of the reconciliation process instead of new conflicts and wars. The economic crisis of the 1980s laid the groundwork for the conflict between the political elites of the Yugoslav republics, for the great anxiety and uneasiness felt by the lowest levels of society.

76. After the Second World War, Yugoslavia underwent very rapid urbanization: in 1945, 73 per cent of the population was engaged in farming, while the percentage had fallen to 19.9 at the start of the economic crisis. The great majority of industrial workers came from the countryside. The State therefore considered that laying off workers was the only way to save them socially, because they could return to the countryside and work there for the rest of their lives. However, many areas in the ethnically diverse republics were completely unsuitable for agriculture. Thus, in Croatia, the underdeveloped areas unsuited for agriculture were inhabited for the most part by Serbs (Krajina) and the result was that their return to these unproductive regions worsened their poverty. This poverty was the cause of their nationalist and political reaction. Thus the political conflict affected the lowest levels of the population in this part of Croatia.

77. The political situation worsened and the federal Government was unable to take any decisions under the then political system. Resolving economic problems was left to the republics because each of them had its own positions and perceptions in respect of the ways to resolve the problems connected with the crisis. It is understandable that the most developed republics (Slovenia, Croatia and Serbia without Kosovo) had differing political interests and conflicting political goals. The political goals of Croatia and Slovenia were oriented towards secession, while Serbia's political objective was to restructure Yugoslavia's constitutional and political system

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through its transformation into a federation. This political goal of Serbia was motivated above all by the fact that the secession of Bosnia and Herzegovina would have the following result: more than two million Serbs outside of Serbia. This problem was not simply tied to the nationalist concept “one nation in one State”, it was also based on the fear (reinforced by the events of the Second World War) that Serbia would be flooded with refugees. A large number of refugees was expected not only because of the atmosphere of intolerance towards Serbs in Croatia and in Bosnia and Herzegovina but also because of the great economic advantage they would enjoy in Serbia, as compared with the regions of Croatia and Bosnia and Herzegovina where Serbs lived.

78. The fact that the Yugoslav republics decided to resolve their economic problems independently of each other initiated the political resolution of those problems. Thus, economic nationalism seeped into the nationalist rhetoric which then dominated the media in all the republics. This rhetoric strengthened participation by nationalist forces in political life.

The international factors contributing to political conflicts

79. According to Susan Woodward, “In fact, however the Yugoslav conflict is inseparable from international change and interdependence and it is not confined to the Balkans but is part of a more widespread phenomenon of political disintegration.” (S.L. Woodward, *op. cit.*, p. 3.)

80. For 40 years, Yugoslavia occupied a special position in the international relations arena: following its emergence from Soviet dependence in 1948, it had taken up a neutral position between the two blocs. Thus, it acted as a buffer zone in the geostrategic constellation shaped by the two blocs. This gave it a privileged position and a special status, supported by the United States and Western Europe. The Soviet Union’s degree of acceptance of this arrangement depended on fluctuations in relations between the two sides. Yugoslavia received a great deal of support from the Third World because of its role in the Non-Aligned Movement, and all of these circumstances contributed to its international security and internal development.

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81. With the end of the Cold War and the collapse of communism in Europe, Yugoslavia’s special position changed. It began to lose the support of major world Powers, which were no longer interested in Yugoslavia as a buffer between the two blocs or in its non-alignment policy, since the option of joining either bloc was no longer available. The two blocs no longer confronted

each other. The establishment of Yugoslavia in 1918 served the interests of the *Entente* Powers, and its existence between 1950 and 1990 served the interests of the two blocs. However, following the disappearance of the latter, the great Powers' interests were limited to purely pragmatic matters; if Yugoslavia wished to survive, that was its internal affair. All that mattered from the standpoint of the main factors affecting international relations was that its existence or break-up should not threaten peace in south-east Europe or elsewhere. The great Powers had always feared local wars only when they could be implicated and threatened by them.

82. Yugoslavia enjoyed a special relationship with the European Community under a trade agreement concluded in 1970. I emphasize that the agreement dated from 1970, which was 20 years before the countries of Eastern Europe — now members of the European Union — signed similar agreements. After the fall of the Berlin Wall, Yugoslavia was of no further political and economic interest to the European Community.

83. During the period of political and economic crisis in Yugoslavia, the International Monetary Fund was the entity most committed to resolving the country's economic and political problems. At the beginning of 1987, the Yugoslav communist party tabled 30 amendments in the federal Parliament to the 406 Articles of the 1974 Yugoslav Constitution. The deteriorating economic situation in the country was exacerbated by the huge trade deficit. The federal Government's proposal of reforms to forestall national bankruptcy was blocked by the negative reaction of the Slovene and Croatian delegation in the federal Parliament. Thus the reforms could not even be initiated.

84. The International Monetary Fund and the World Bank then proposed a sweeping overhaul of the political and economic system in Yugoslavia. To be more precise, these two international financial institutions made the granting of new loans conditional on constitutional reforms designed to strengthen federal authority and introduce majority voting for decision making at the Yugoslav National Bank. They felt that these changes would establish monetary discipline and promote debt repayments (S.L. Woodward, *op. cit.*, p. 82).

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85. In light of these proposals, the federal Government tabled a proposal in the federal Parliament. The proposal contained a list of regulations on the role of the communist party in the decision-making process at federal level. However, during that same year, 1987, two further

proposals for constitutional reforms were tabled in the Parliament: a Slovene proposal to transform Yugoslavia into a confederation and a Serbian proposal (supported by some other republics) on a federalist structure for Yugoslavia.

86. The negotiations conducted within the federal Parliament had only one aim: not to achieve an agreement, since that would require unanimity. Thus, in the absence of international support, Yugoslavia's disintegration began. The federalization of the communist party also contributed to the process of disintegration, since decision-making powers were transferred to the organs of the party in the individual republics. At the same time, in Slovenia and Croatia, the Yugoslav National Army came under attack. The Yugoslav National Army was the largest beneficiary of funds from the federal budget and the only truly Yugoslav institution that served the defence of the country. Towards the end of 1987, the Slovene delegation and part of the Croatian delegation left the federal Parliament as they no longer wished to contribute to the federal budget. The Yugoslav National Army was left in the hands of the non-developed republics and of Serbia, which had to take over its financing. The nascent political conflicts were thus channelled into the dangerous path of military conflict.

Increased political conflict

87. Paradoxically, increased political conflict in this situation was reflected in the establishment of political parties under the "democratization" process resulting from the fall of communism in Eastern Europe. Thus, in Croatia and Bosnia and Herzegovina, political parties were formed on an ethno-national basis, reflecting the fact that inter-ethnic relations were the most important factor in the political conflict. Since political relations were based on religious and ethnic differences, rather than on the clash of political ideas and programmes for the organization of the State, the interests of the ethno-national groups became the driving force in political relations.

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88. The formation of political groups along ethno-national lines results in the horizontal stratification of society, since ethno-national communities group together in territorial units and define their own boundaries. This was the period when the ethno-national communities in Croatia and Bosnia and Herzegovina formed themselves into territorial groups, thereby masking

socio-economic problems. Poverty was offset by a feeling of belonging to the group and its territory.

89. Political territorialization may lead to processes of collaboration or conflict between nations divided along territorial lines. However, if this occurs within a State, the process is a consequence of conflict, since collaboration would preclude ethno-national territorialization. Political territorialization on an ethno-national basis was confined to 25 per cent of the territory of the Croatian republic, even though 50 per cent of Serbs in Croatia lived in Croat towns. These Serbs in Croat towns preferred to emigrate to Serbia rather than move to the economically deprived areas that were under the political control of the Serbs in Croatia.

90. The situation in Bosnia and Herzegovina was different, as it was not possible to delimit territories populated by homogeneous ethno-national groups. All the towns of Bosnia and Herzegovina (Sarajevo and the others) had ethnically mixed populations. In rural areas, ethno-national territorialization was possible in relatively mono-ethnic villages. The grouping together of villages on an ethno-national basis is clearly apparent from an analysis of wartime operations between 1992 and 1995.

91. It was the democratic elections which made military conflict inevitable. This is paradoxical but true, I believe. It would be paradoxical if one overlooked the fact that the ethno-national parties were the main players in these elections. They thus amounted to national referenda rather than democratic elections. Moreover, the political crisis resulted in a nationalistic approach to resolving the crisis. This was clearly the reason why the elections were won by the leaders of nationalist parties in Croatia, Bosnia and Herzegovina and Serbia. Thus the republics voted for war leaders, with the result that it would not be long before the banners of war were unfurled and Yugoslavia sank into the abyss of inter-ethnic conflict.

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92. The ethno-national conflict was the consequence of differences in the aims of the nationalist parties. Those of Croatia had their sights set on Croatian independence. The nationalism of the Serbs in Serbia and the Serbs in Croatia and Bosnia consisted of a desire to keep Yugoslavia intact. Rightly or wrongly, Serbs clung to the idea, in their national consciousness, that they had created Yugoslavia, that they had made many sacrifices for Yugoslavia during the two world wars, and that they should therefore safeguard the country. The Croats in Bosnia and

Herzegovina were integrated into Croat nationalist parties which reflected their identity, their sense of belonging to the Croat nation and their right to be integrated into the Croat State.

93. The Serbs of Bosnia and Herzegovina had a dual identity. They were Serbs and they were therefore in favour of preserving Yugoslavia. If the others did not give their consent, the Serbs would choose to integrate their territories into Serbia, while retaining a certain amount of federal autonomy.

94. Once the military conflict started, Milosevic could clearly see that he had no majority support from the people in Serbia, either for remaining in power or for his war policy, the aims of which were illusory.

95. It is interesting to note that, despite a veritable explosion of nationalist ideas, the parties that came to power did not obtain an absolute majority of votes in Serbia and Croatia in 1990. The party of Franjo Tudjman, the Croatian Democratic Union (HDZ), received 47.5 per cent of the votes in Croatia's April 1990 elections. In Serbia, Milosevic's socialist party (SPS), which was in fact the remodelled communist party, received 42.5 per cent of the vote. Despite losses due to vote rigging and despite low funding, the opposition parties in Serbia received 57.5 per cent of the vote. However, the electoral systems in Serbia and Croatia enabled the Croatian Democratic Union in the Croatian Parliament and the socialist party in the Serbian Parliament to take two thirds of the seats in the National Assembly.

96. The first democratic elections in the Socialist Republic of Bosnia and Herzegovina took place on 18 and 19 November 1990. The results were published in *Official Journal* No. 42/1190 of Bosnia and Herzegovina on 19 December 1990. The seats in the Parliament were distributed as follows: 86 seats for the SPA (Muslim party), 72 seats for the SPS (Serbian party) and 44 seats for the HDZ (Croatian party). This distribution reflected the population structure of the country. The three national parties accounted for 202 seats out of a total of 240 seats in the Parliament of Bosnia and Herzegovina.

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97. The Serbs of Bosnia and Herzegovina can be said to have had two main political aims, which were, in essence, to retain an ethnically federalized Bosnia and Herzegovina in Yugoslavia, or alternatively, if the Muslims and Croats opposed that aim, to integrate the territories inhabited by Serbs into Serbia. In the latter case, Bosnia and Herzegovina would cease to exist as such, because

the Croats planned to incorporate the territories with a majority Croatian population into Croatia. This was moreover the subject of the negotiations between Milosevic and Tadjman, the Croatian leader, and of the high-level discussions among government leaders in Croatia. The Croatian President Franjo Tadjman, in a discussion with representatives of the HDZ party of Bosnia and Herzegovina (27 December 1991 in Zagreb), made the following remarks:

“Bosnia and Herzegovina should not be considered as something eternal. The survival of Bosnia and Herzegovina as an autonomous State, even if it were possible, would be at variance with the interests of the Croatian people. It makes it impossible for the Croatian State to achieve its normal territorial aspirations and jeopardizes the existence of the Croatian people in Bosnia and Herzegovina. (Transcripts on the division of Bosnia, *op. cit.*, 75.)

98. The negotiations between Milosevic and Tadjman, which took place at Karadjordjevo — a hunting resort favoured by Tito — in 1991, and which concerned the division of Bosnia and Herzegovina, clearly demonstrated that the Serbs and the Croats laid claim to parts of the territories of Bosnia and Herzegovina which they wished to incorporate in Serbia or Croatia, which is why the Serbs and the Croats attempted to occupy those territories by military force.

42 99. How did the Muslims stand in relation to Bosnia and Herzegovina and its political organization, given its multi-ethnic structure? The history of the Muslims contains no indication of national projects for the future of their State. Until 1875, the Muslims lived as privileged subjects of the Ottoman Empire. They had an interest in the survival of that empire and in its control over Bosnia and Herzegovina. However, following the occupation of Bosnia and Herzegovina by the Austro-Hungarian monarchy in 1878, the Muslims accepted Austro-Hungarian rule, putting up resistance at times, but also collaborating therein. Once Bosnia and Herzegovina became a part of the Kingdom of Yugoslavia (1918), the Muslims collaborated with the Serbian political elite and formed no projects hostile to Yugoslavia. It should be noted that, after the Second World War and despite the fact that a section of the Muslim population had collaborated with the Ustashi régime that ruled Bosnia and Herzegovina during the Second World War, those Muslims who had contributed to the struggle against fascism were rewarded with senior positions in the communist party and the Government.

100. However, with the onset of the 1967-1971 crisis and the amendments to the Constitution in 1963 (which gave Muslims the status of the sixth nation in Yugoslavia), the

political behaviour of the Muslim elites changed. In 1970, Alija Izetbegovic, with his colleagues and collaborators, published the Islamic Declaration, in which he specified the political goals of the Muslims in Bosnia and Herzegovina. In that declaration, Alija Izetbegovic wrote:

“The first and the most important of these conclusions is definitely the one about the incompatibility of Islam and non-Islamic systems. There can be no peace or coexistence between the ‘Islamic faith’ and ‘non-Islamic’ social and political institutions . . . Claiming for itself the right to regulate its own world, Islam clearly rules out any right or possibility of action of any foreign ideology on its turf.” (Preliminary Objections, p. 25, para. 1.6.5.)

101. The group led by Alija Izetbegovic received a multi-year prison sentence in Titoist Yugoslavia. The Izetbegovic text in itself should not have resulted in prosecution in a democratic State. The fact that it was shows that it was considered a threat to Yugoslav society. At the time when the multi-ethnic crisis erupted in Yugoslavia (in the 1990s), Alija Izetbegovic was elected President of the Muslim political party (SDA), and in that capacity he became President of Bosnia and Herzegovina in the first “democratic” elections. Of course, Mr. Izetbegovic was able to revise his views on the multi-ethnic and multi-religious organization of Bosnia and Herzegovina. But he was equally in a position to revert to the views expressed in the Islamic Declaration. There is no doubt, however, that the Bosnian Serbs were deeply troubled by his past. Even if that had not been the case, those who wished to spread ethnic hatred found an excellent rationale for their propaganda in the Islamic Declaration.

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102. In his party’s political programme, Mr. Izetbegovic insisted on a sovereign and integral Bosnia and Herzegovina with no regionalization or federalization along ethnic lines. All this made it difficult to find a peaceful solution to the conflict in Bosnia and Herzegovina. Mr. Izetbegovic was so obsessed with his conception of a sovereign Bosnia and Herzegovina that he stated at a session of Parliament (27 February 1991): “I would sacrifice peace for a sovereign Bosnia-Herzegovina, but I would not sacrifice its sovereignty for peace.” This statement worsened the relations between the national groups in Bosnia and Herzegovina, because they all had different programmes (Preliminary Objections, p. 41, para. 1.8.8).

103. Madam President, Members of the Court, I have up to now presented a reasonably clear summary of the developments in the Yugoslav crisis which gave rise to the military conflicts. That summary is certainly incomplete, as a book could be written on each element of the summary

(indeed, many books have already been published on this subject). I have attempted to describe objectively and in broad outline the development of the crisis which led up to the tragic events in Yugoslavia in the 1990s.

104. The “war” in Slovenia was the foreword and the war in Croatia was the preface to the tragedies of the war in Bosnia and Herzegovina. The forces that were prepared to take up arms showed their colours during the first military clashes in Croatia towards the end of March 1991 at Plitvice and around the beginning of May 1991 at Borovo Selo near Vukovar. On one side, there was the Croatian police force, on the other the Serbian rebels. In both instances, the Yugoslav National Army (JNA), in its capacity as a legitimate armed force, acted to separate the antagonists. This state of affairs did not last long, as the JNA was converted into a Serbian army. The third part of this statement will show how that conversion was effected.

105. Europe and the world were divided when the conflict first erupted: Germany, Austria, Denmark and Italy supported Slovenia and Croatia in their intention of seceding from Yugoslavia. The United States, France, the United Kingdom, Spain and Greece were initially in favour of maintaining the territorial integrity of Yugoslavia. The European Community, in its Declaration of 26 March 1991, expressed concern about the developing situation in Yugoslavia and appealed to all the parties to refrain from the use of force: “A united and democratic Yugoslavia has the best chance of being harmoniously integrated into the new Europe.” (J.P. Maury, *La Constitution européenne*, PUF, Paris, 1996, p. 250.) Two senior officials of the European Community, Mr. Delors and Mr. Santer, visited Belgrade on 29 and 30 May 1991 and expressed their support for the maintenance of Yugoslavia’s territorial integrity. They offered Yugoslavia an association agreement if it remained united. Moreover, Mr. Delors promised a grant of \$4.5 billion, on behalf of the European Community, to be used for political reforms, democratization and development of a market economy, provided that Yugoslavia introduced a centralized financial management system (S.L. Woodward, *op. cit.*, p. 160). Just a few days before Slovenia’s accession to political independence, the United States Secretary of State visited Belgrade. During his visit, he emphasized his support for the continued existence of Yugoslavia. He stated that the United States would not recognize Slovenia and Croatia if they seceded unilaterally, as that would be an unlawful act (S.L. Woodward, *op. cit.*, p. 161). However, he stressed that no change in the borders could be

effected by force since, if force were used, the United States might review its position regarding non-recognition of any unilateral secession.

106. The use of force in Slovenia by the Yugoslav National Army as a result of the unilateral secession of 25 June 1991 was deliberately aborted. However, the survival of Yugoslavia was under threat. The Yugoslav National Army's withdrawal from Slovenia, in the wake of an agreement reached in mid-July of the same year, signalled *de facto* recognition of Slovenia's secession.

107. At the same time, the secession of Croatia served to worsen the political conflict, especially in those regions of Croatia where the Serb rebels were determined to remain within Yugoslavia. The European Community disputed the legitimacy of the use of force in Croatia. However, the Yugoslav National Army was still a legitimate military force in Yugoslavia and Croatia was still a part of Yugoslavia. Nevertheless, the European Community insisted that a commission (the Badinter Commission) prepare a report. It also insisted on introducing new sanctions if the military conflicts did not cease by 1 September 1991. The first sanctions against the federal Yugoslav Government were imposed on 5 July 1991: economic aid (which should have amounted to \$1 billion) was cut and an embargo was imposed on Yugoslav arms imports (S.L. Woodward, *op. cit.*, p. 161). At the same time, the European Community decided to organize a conference on Yugoslavia with a view to resolving the conflicts peacefully. It also set up the arbitration commission chaired by Mr. Badinter which was to issue a legal opinion on the situation in Yugoslavia.

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108. The conference on Yugoslavia was held in September 1991 in The Hague under the chairmanship of Lord Carrington. The establishment of a standing conference, to be tasked with finding solutions to provide a way out of the war, was proposed at that gathering. From that time and until December 1991, the European Community's involvement in the Yugoslav crisis was limited to Lord Carrington's diplomatic mission.

109. After several failed efforts to end the military clashes in Croatia, the United Nations Security Council, on the initiative of Hungary, Canada and Austria, decided to take up the question of the Yugoslav crisis. At its meeting on 25 September 1991, the Security Council, under Chapter 7 of the United Nations Charter, adopted resolution 713, in which it characterized the

fighting in Yugoslavia as “a threat to international peace and security”. The resolution established an embargo on the importation of weapons into Yugoslavia. The Security Council authorized Mr. Cyrus Vance, an American diplomat, to initiate negotiations with a view to ending the hostilities. The United Nations decided to form a peacekeeping force (UNPROFOR) with the task of separating the warring factions.

110. In view of the fact that the internal borders between the federal units of Yugoslavia were recognized as international frontiers, it now became necessary to recognize the new States so that Yugoslavia would cease to exist. At the same time, the European Community decided to recognize the secessionist States. Such recognition was to be given by the end of January 1992 at the latest. The recognition of Slovenia and Croatia did not contribute to the outbreak of war in those republics. However, it was made conditional on the negotiations regarding frontiers. French President François Mitterrand, on 14 July 1991, proposed a review of the borders between the Yugoslav republics as the price to be paid for their secession. One year later, Mr. Mitterrand expressed regret that his proposal had not been accepted (J.P. Maury, *op. cit.*, p. 255).

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111. The recognition of Slovenia and Croatia did not lead to war, but it was a major contributory factor to the outbreak of war in Bosnia and Herzegovina following the recognition of Bosnia and Herzegovina.

112. Madam President, Members of the Court, I believe that the following conclusions can be drawn from my statement:

- (a) the hostilities in Bosnia and Herzegovina have no historical roots;
- (b) inter-ethnic hatred was not the cause of the hostilities;
- (c) never in Serbian history has there been a policy or plan to exterminate non-Serbs;
- (d) there has never been a policy or plan for the demarcation of ethnic borders through ethnic expulsions;
- (e) the hostilities were triggered by the serious political and economic crisis which had led to the break-up of Yugoslavia;
- (f) the disintegration of Yugoslavia resulted in the adoption of policies linked to the occupation of “its own” ethnic territories;
- (g) the war in Yugoslavia was a territorial war.

Thank you, Madam President.

The PRESIDENT: Thank you, Professor Stojanović. The Court will now rise and will sit again at 10 o'clock tomorrow morning.

The Court rose at 5.55 p.m.
